APPENDIX A — AFFIDAVIT OF KENT R. MINER DATED AND FILED JANUARY 22, 1997

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. F-2-96-CV-0732

RAYMOND A. HAIK; MARK C. HAIK,

Plaintiffs,

vs.

THE TOWN OF ALTA, a political Subdivision of the State of Utah, and SALT LAKE CITY CORPORATION, a political Subdivision of the State of Utah,

Defendants.

AFFIDAVIT OF KENT R. MINER

I, Kent R. Miner, being first duly sworn on oath, state as follows:

1. I am a resident of Salt Lake County, State of Utah, and am over the age of 18 years.

2. I am employed by the Salt Lake City-County Health Department and currently serve as the Director of the Bureau of Environment of Sanitation and Safety, Division of Environmental Health.

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3. I have personal knowledge of the facts testified to in this affidavit and, if called and sworn as a witness, I could so testify.

4. I have been employed by the City-County Health Department since October 26, 1971. During that period of time, I have become familiar and have had direct involvement with health and drinking water regulations affecting the development of real property. I am also familiar with such regulations as they apply to the Albion Basin, which is located within the Salt Lake City watershed at the head of Little Cottonwood Canyon.

5. No later than 1971, water supply regulations were in effect and applicable to the Albion Basin area requiring the physical and legal availability of 400 gallons of drinking water per day per structure. Those standards or regulations are still applicable today and are codified in the Utah Administrative Code, R. 309-105 *et seq*.

6. The Town of Alta will not issue building permits unless our department establishes that the 400 gallon per day standard is satisfied.

7. The Health Department has consistently refused to approve building permits within the Albion Basin unless the Basin owners can demonstrate their ability to satisfy the 400 gallon per day per structure requirement.

DATED this 22nd day of January, 1997.

/s/
Kent R. Miner

APPENDIX B — REPLY AFFIDAVIT OF MAYOR WILLIAM H. LEVITT DATED AND FILED APRIL 8, 1997

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. F-2-96-CV-0732

RAYMOND A. HAIK; MARK C. HAIK,

Plaintiffs,

vs.

THE TOWN OF ALTA, a political Subdivision of the State of Utah, and SALT LAKE CITY CORPORATION, a political Subdivision of the State of Utah,

Defendants.

REPLY AFFIDAVIT OF
MAYOR WILLIAM H. LEVITT

I, William H. Levitt, being first duly sworn on oath, depose as follows:

1. I am the Mayor of the Town of Alta. I have been the Mayor since 1971.

2. I have personal knowledge of the facts testified to in this affidavit.

3. I was intimately involved in deliberations, meetings and public hearings concerning the proposed 1981

annexation of the Albion Basin and related issues involving the Town's 1976 Water Supply Contract with Salt Lake City.

4. I have reviewed the March 17 and March 18, 1997 affidavits of Joseph S. Knowlton and Richard J. Nelson regarding their recollection of a meeting at Dr. Robert Wolfe's home where the topic was the 1981 annexation of the Albion Basin. I don't remember whether the meeting they described in their affidavits occurred before or after the annexation ordinance was adopted.

5. Mr. Nelson and Mr. Knowlton both recall that water was not a topic of discussion at that meeting. I agree. It was not discussed because both Nelson and Knowlton had water contracts for their existing cabins with Little Cottonwood Water Company.

6. It's also true that we talked about municipal services other than water that the Town would offer to Albion Basin residents upon annexation, including fire protection, police protection, avalanche warning notification and library services.

7. Sewer service was also discussed. But only in terms of Albion Basin owners' access to the Town's sewer dump station at reduced rates. The Town has never had any plans or made any proposals for the extension of sewer lines into the Albion Basin.

8. I have also reviewed the affidavit filed by Marvin Melville regarding his recollection of topics discussed in connection with the 1981 annexation of the Albion Basin.

Appendix B

9. Mr. Melville is mistaken that no mention was made at the hearings or in subsequent discussions concerning the Town's ability to provide water to the Albion Basin subdivision. The minutes of the Town's July 16, 1981 public hearing made it very clear that the Town had no intention of changing its 1976 Water Supply Contract with Salt Lake City. It was also made clear at the hearing and in subsequent discussions with owners that water and sewer connection fees would not be at issue because the 1976 Contract did not allow the Town to extend its water system beyond the Town's 1976 boundaries.

10. Some time after March 11, 1988, I received a letter from LeRoy W. Hooton, Director of Salt Lake City's Department of Public Utilities. A true and accurate copy of Mr. Hooton's letter is attached. Mr. Hooton was responding to my earlier request that Salt Lake City approve, under the terms of the 1976 Water Supply Agreement, an extension of Alta's water lines into the Albion Basin annexation area. I referred Mr. Hooton's March 11 letter to John Guldner, and requested that he inform Marvin Melville that Salt Lake City had refused the Town's request. Mr. Melville had asked the Town make another attempt to secure Salt Lake City's approval for an extension of the Town's water lines beyond the Town's 1976 boundaries.

DATED this 8th day of April, 1997.

/s/
Mayor William H. Levitt

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SALT LAKE CITY CORPORATION
Department of Public Utilities
Water Supply & Waterworks
Water Reclamation
1530 South West Temple
Salt Lake City, Utah 84115

March 11, 1988

Mayor William Levitt
Town of Alta
Alta, Utah 84092

Dear Mayor Levitt:

We recognize that there are existing authorized uses of private property in the Albion Basin which are only cabins with intermittent use. We feel that any further expansion beyond this limited existing use, especially commercial development, would adversely affect water quality in Little Cottonwood Canyon and would not be consistent with Salt Lake City's Watershed Management Plan (the page applying specifically to Little Cottonwood Canyon is attached).

We wish to point out that, in our existing water supply contract with the Town of Alta (dated 1976), it specifically states that the Town of Alta cannot expand its water system into areas outside of the town limits (as defined at the time of the contract) without the consent of Salt Lake City. Our Department will certainly not approve any expansion of Alta's water system into the Albion Basin.

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The Salt Lake City Watershed Management Plan, developed after extensive public meetings and input, and which is now being considered by the City Council, further indicates that much of the private land in Albion Basin should be acquired as part of Salt Lake City's Watershed Acquisition Plan to preserve water quality in Little Cottonwood Canyon.

Sincerely,

/s/
LEROY W. HOOTON, JR.
Director

WE/co
90:54

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LITTLE COTTONWOOD CANYON WATERSHED MANAGEMENT

Recommendation: Salt Lake City should maintain the existing watershed management practices in Little Cottonwood Canyon. Private lands in critical watershed areas should be considered as part of the recommended land acquisition program.

Salt Lake City should develop an inter-local agreement with Sandy City, Town of Alta and other communities with major watershed responsibilities in Little Cottonwood Canyon to define objectives for watershed management, delineate roles and responsibilities in the Canyon, and outline polices to be pursued in the Canyon.

Implementation: 1988 for inter-local agreement, ongoing.

Explanation: Little Cottonwood Canyon has the best water quality of all the Wasatch Mountain canyons used for Salt Lake City water supply. The excellent water quality is maintained despite heavy and increasing recreational use. Salt Lake City, Alta Town, Salt Lake County Service Area #3, and private users have utilized effective watershed management practices to control potential water quality deterioration. Salt Lake City should continue to work closely with other Little Cottonwood Canyon jurisdictions to retain excellent water quality and to be vigilant in watershed protection measures.

Salt Lake City shares water rights in Little Cottonwood Canyon with other municipal entities, most notably Sandy

City. Informal coordination between the municipalities has been good, but no joint policies have been developed to assure a long-term relationship and establishment of practices and responsibilities between these Canyon water rights owners. Sandy City expressed support for the inter-local agreement option of the Draft Watershed Management Plan. To delineate working relationships in the Little Cottonwood Canyon watershed, establish notification procedures for Canyon activities, and solidify general policy approaches for watershed protection, Salt Lake City should establish an interlocal agreement for the Canyon.

The Town of Alta and several respondents have noted the large amounts of developable private land in the Upper Canyon that could adversely affect the watershed. Salt Lake City should evaluate these private properties as part of the broader land acquisition program recommended in this Proposed Plan.

APPENDIX C — RELEVANT CODES

Utah Code § 10-2-401

UTAH CODE § 10-2-401. **Legislative policy.**

The Legislature hereby declares that it is legislative policy that:

(1) sound urban development is essential to the continued economic development of this state;

(2) municipalities are created to provide urban governmental services essential for sound urban development and for the protection of public health, safety, and welfare in residential, commercial and industrial areas, and in areas undergoing development;

(3) municipal boundaries should be extended, in accordance with specific standards to include areas where a high quality of urban governmental services is needed and can be provided for the protection of public health, safety, and welfare and to avoid the inequities of double taxation and the proliferation of special service districts;

(4) areas annexed to municipalities in accordance with appropriate standards should receive the services provided by the annexing municipality, subject to Sections 10-2-422 and 10-2-424, as soon as possible following the annexation;

(5) areas annexed to municipalities should include all of the urbanized unincorporated areas contiguous to municipalities, securing to residents within the areas a voice in the selection of their government;

(6) decisions with respect to municipal boundaries and urban development need to be made with adequate consideration of the effect of the proposed actions on adjacent areas and on the interests of other government services and the ability to deliver the services under the proposed actions, and on factors related to population growth and density and the geography of the area; and

(7) problems related to municipal boundaries are of concern to citizens in all parts of the state and must therefore be considered a state responsibility.

* * *

Utah Code § 10-2-422

UTAH CODE § 10-2-422 **Bonds not affected by boundary adjustments or annexation — Payment of property taxes.**

(1) A boundary adjustment or annexation made under authority of this chapter may not jeopardize or endanger any general obligation or revenue bond.

(2) Any bondholder may require the payment of property taxes from any area that:

(a) was included in the taxable value of the municipality or other governmental entity issuing the bond at the time the bond was issued; and

(b) is no longer within the boundaries of the municipality or other governmental entity issuing

the bond due to the boundary adjustment or annexation.

* * *

Utah Code § 10-2-424

UTAH CODE § 10-2-424 **Electric utility service in annexed areas.**

Whenever the electric consumers of the area being annexed are receiving electric utility services from sources other than the annexing municipality, the municipality may not, without the consent of the electric utility, furnish its electric utility services to the electric consumers until the municipality has reimbursed the electric utility company which previously provided the services for the fair market value of those facilities dedicated to provide service to the annexed area. If the annexing municipality and the electric utility cannot agree on the fair market value, it shall be determined by the state court having jurisdiction.

* * * *

APPENDIX D — MINUTES OF PUBLIC HEARING DATED JULY 16, 1981

PUBLIC HEARING
JULY 16, 1981
ALBION BASIN POLICY DECLARATION

The Mayor read a letter from L/ roy Hooton, Director of the Salt Lake City Water Department. See attached copy for your records.

The meeting was then turned over to Dave Nicponski who gave a presentation on the history, tax consequences and other important facts concerning this Policy Declaration and how it will effect the land and home owners in this area.

He noted that we have been contacted by many property owners asking that we move on the annexation of this area to the Town of Alta. Also, with the advent of the two new lifts, we will be running into some jurisdictional problems. This represents an urbanized development and with it the Town of Alta will be called to provide support services. It shall also be noted that he Town of Alta has contacted all outside agencies and they have received no objections to this proposal.

We have to address the problem of who will handle the problems that arise with the building of these two lifts. (Salt Lake County, Town of Alta, Forest Service, Watershed). The winter season is approaching and we must address this situation as soon as possible. The Town of Alta will not participate in the duplication of services to this area.

The proposed area map was presented.

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The Town Council has taken the following positions on this area.

1. It has no intention of changing any existing agreements with outside agencies.

2. The Town of Alta will retain the present zoning of this area as exists with Salt Lake County, of this area, and does not contemplate any changes. The tax consequences were addressed by using the chart that was furnished to the Town Council. With this annexation there will be an increase in the property tax to the residents that live in this area. It is the Town of Alta's contention that this increase will be offset by the services that this Town will provide. (Fire rating from a 10 to a 7, police protection, no Alta Central requested, sewer dump station rate lowered).

The Town is saying that if you own a home in this area you will save by annexing to the Town. This might not be the case if you just own land. But it might enhance the property value of your land.

This is a Town initiated annexation and that is what the amendments did and we did this for the above stated reasons.

The amount of money that will be returned to the Town as far as a tax is concerned is not that much. At the most, $5,000.00 a year.

The meeting was opened for discussion:

John Cahill asked if the fire rating will pertain to this area, as there are no fire hydrants in the area and the road is not

passable 9 months out of the year. The Mayor stated that when Secret Lake annexed they did receive the benefit of the Town's rating. It is a Town wide rating.

Mr. Cahill asked if his tax on his mining claims will be affected by the tax increase. It was noted that on mining claims, the tax is paid to the State and not the County.

Mr. Cahill asked that we receive the sewer and water connections fees and Dave noted that the basin people will not realize either one as they will not be able to hook on to either system because of the location of this area. The building permit fees are set by the Building code followed by the County.

Andrew Jurek, property owner, asked if and when we annex the Albion Basin area and road will we maintain this road. The Forest Service says that in their plan for 1982, they will try to upgrade the road and grade it.

Marv Melville, property owner, after a meeting with the Mayor, Mr. Morton and the Town has a petition signed by many property owners requesting that the Town set a 120 time period during which the property owners can digest the materials now available on this proposed annexation. He stated that it is his opinion that most of the owners, except for possibly one, would lean toward wanting to be a part of Alta Town. Mr. Norman Tanner did ask why we chose to draw the boundary the way we did as opposed to following the ridge line and we simply felt it was easier to draw it on the section lines. Our attorney did advise us that we can change this line but we will have to amend this declaration and go through the same procedure again.

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Mr. Norman Tanner, property owner, feels that if 30 days would not pose an inconvenience to the Town, he would like to change his position and would like to go on record as being in favor of this annexation.

Jeanne Harmer, property owner, asked if those people that want to annex could go ahead annex and not wait the 30 days.

Gary Lund, property owner, stated that he would like to go on record as favoring this annexation. He also talked to Mr. Frohlich from Auburn, Maine and he also would like to support this annexation.

Bill Hoge, property owner, has no objection to this proposal but asked the Town Council if they would be interested in augmenting their water supply for the Town with a water reservoir in the basin. The Mayor stated that the Town will do everything possible to regularize the water supply in the basin and we will do this in cooperation with the Salt Lake City Water Dept.

We will do and will try to work something out with the Water Department, as they actually have full control over the water in the canyon. We could talk in terms of a controlled reservoir and try our best to work with everyone concerned.

Dave Nicponski also noted that if this area is annexed and you wish to become a voting resident of this Town you may do so. You have that option.

Mr. Melville asked about the collection of the permit fees from the Ski Lifts. It was explained that we will collect these

fees and hold them in escrow until such time (30 days from now) the Annexation ordinance is either passed or rejected. If rejected, the fees will be passed on to the appropriate agency.

For the record: the Mayor stated that we are now acting as Town Council on the Policy Declaration

There was a motion made by Jim Shane to adopt the Proposed Policy Declaration for the Albion Basin Area. There was a second by Chic Morton.
A roll call vote was taken.

Doug Christenson	aye
Al Kapp	aye
Bill Levitt	aye
Chic Morton	aye
Jim Shane	aye

The vote was unanimous with all present and voting in favor.

[Corrected and removed from Public Hearing. Appears on p. 3A Regular Minutes]

Jeanne Harmer was concerned about paying their fire insurance premium and using the sewer dump station now when in fact if they wait 30 days they will get a lower rate on both. It was noted that they should notify their insurance company of this proposal, pay the premium and anticipate a refund when they come under our rating in 30 days. The same is true with the dump station. We will refund their money if in fact the area is annexed.

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Marv Melville did note that a petition from some property owners showing concerns about this annexation was received by the Town. But he would like to meet with a representative from the Town and go over all the details and questions with regard to this proposal.

The Mayor reassured everyone that we do and will answer any questions or concerns anyone has with regard to this proposal to annex.

Chic Morton, speaking as the manager of the Ski Lifts, would like to say that the cooperation and assistance from Alta Central, the Marshal's office and many others has been great and they would like to continue to work with the Town in this area.

There was a motion that the Town Council pass an ordinance annexing the Albion Basin property as incorporated in the Policy Declaration and that ordinance will be subject to the following:

1. *this ordinance will not be effective or signed until the 20th day of August, 1981 at which time the regular Town Council meeting will be held.*

2. *that any party having a question on the annexation or objection to the annexation may submit comments and input during this period of time and appear before the Town Council prior to the finalization of this particular annexation.*

3. *any fees or permits collected during this 30 day time period will be held in escrow until this annexation is finalized. Should it not be finalized, the monies will be transferred to the proper agencies had we not annexed.*

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Jim Shane seconded this motion. A roll call vote was taken.

Doug Christenson	aye
Al Kapp	aye
Bill Levitt	aye
Chic Morton	aye
Jim Shane	aye

The vote was unanimous with all present and voting in favor.

[Corrected and removed from Public Hearing. Appears at p. 3A Regular Minutes]

CORRECTION ON JULY 16, 1981
TOWN COUNCIL MINUTES
Page 3-A

The following is to be deleted from the Public Hearings minutes of July 16, 1981 and to be made a part of the Regular Town Council Minutes.

This page number will read as follows 3-A.

There was a motion made by Jim Shane to adopt the Proposed Policy Declaration for the Albion Basin Area. There was a second by Chic Morton. A roll call vote was taken.

Doug Christenson	aye
Al Kapp	aye
Bill Levitt	aye
Chic Morton	aye
Jim Shane	aye

The vote was unanimous with all present and voting in favor.

Appendix D

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3. *Any fees or permits collected during this 30 day time period will be held in escrow until this annexation is finalized. Should it not be finalized, the monies will be transferred to the proper agencies had we not annexed.*

Jim Shane seconded this motion. A roll call vote was taken.

Doug Christenson	aye
Al Kapp	aye
Bill Levitt	aye
Chic Morton	aye
Jim Shane	aye

The vote was unanimous with all present and voting in favor.